TAN SENG TIN & ORS. v. PUBLIC PROSECUTOR

[A.Cr.J. (Ong Hock Sim J.) June 30, 1969]

[Penang — Criminal Appeal No. 21 of 1969]

Customs — Evasion of customs duties — Attempt at — Certificate of Comptroller-General of Customs that goods are over-issued newspapers — Whether court could go behind certificate — Customs Act, 1967, s. 135.

The appellants were charged with being concerned in an attempt at fraudulent evasion of customs duties by declaring over-issued newspapers as over-issued magazines. A certificate was produced that the goods were over-issued newspapers. The learned president of the sessions court acquitted the appellants on the ground that he was not satisfied that the goods were over-issued newspapers but he ordered them to be forfeited. The appellant appealed against the order for forfeiture.

Held: the learned president in this case had failed to come to any finding of fact one way or the other and therefore, acting in revision, the court should set aside the order of acquittal and order a retrial.

MAGISTRATE'S CRIMINAL APPEAL

Eugene Khoo for the appellants.

Abu Mansor bin Ali (Deputy Public Prosecutor) for the respondent.

Ong Hock Sim J. (delivering oral judgment): The appellants were charged on two charges under the Customs Act 1967 to wit:—

"*1st Charge*

That you on 31.8.68 at about 9.35 a.m. at Mitchell Pier Godown, Pier Road, Butterworth, were knowingly concerned in an attempt at fraudulent evasion of Customs duties amounting to $2,503 being the duties on 74.25 tons nett of over-issued newspapers which were declared as 75 tons Swedish over-issued magazines in form Customs No. 3 ref. 0265 dated 21.8.68, thereby committing an offence under section 135(1)(g) and punishable under section 135(1)(i) of the Customs Act 63/67."

"*2nd Charge*

That you on 31.8.68 at about 9.35 a.m. at Mitchell Pier Godown, Pier Road, Butterworth, did make a declaration required by the Customs Act 62/67 which was incorrect in particular in that it is stated in the said declaration that the goods were Swedish over-issued magazines whereas in truth and in fact they were over-issued newspapers, thereby committing an offence under section 133(1)(a) and punishable under the same section of the Customs Act 62/67."

At the conclusion of the trial, the learned president, sessions court, acquitted and discharged the appellants but he made an order of forfeiture of the subject matter of the 1st charge. The appellants are now appealing from that part of the order of the learned president which directed that the 74.25 tons of over-issued newspapers be forfeited to the Customs. The judgment of the learned president, in so far as this appeal is concerned, is very short and I propose to quote it in full:—

"To this charge all the defendants claimed trial and are defended by Mr. Eugene Khoo. The prosecution is conducted by Superintendent of Customs Inche Boon Oon Seang. At the conclusion of the trial I acquitted and discharged all the defendants. I also ordered the goods produced that is 74.25 tons of over-issued newspapers be confiscated to the Customs. The question in dispute at the trial is whether these goods are over-issued magazines or newspapers. I acquitted the defendants because there is not enough evidence to indicate either. I was in grave doubt as to whether these are over-issued newspapers or magazines and as such whether they are dutiable or not. As such after the acquittal I ordered the goods to be confiscated to the Customs."

It is not surprising that one of the grounds of the petition of appeal is that the learned president has failed to give proper grounds regarding the forfeiture of the goods and findings of fact regarding the same. It is a habit which I hope this learned president will overcome — this fault of his in not giving any reasons for his judgments. I am not surprised that this complaint was made by the appellants. He has stated "I also ordered the goods produced *that is 74.25 tons of over-issued newspapers* be confiscated to the Customs." How then can he say that he was in doubt whether they are magazines or newspapers? He is also wrong in law in my view in saying that he could go behind the certificate even if P.6 can be regarded as having been made pursuant to section 22 of the Customs Act 1967. P.6 purports to have been signed on behalf of the Comptroller-General and classified the samples sent as being within Tariff Code 251.109. Tariff Code 251.109 merely heads "Over-issued newspapers duty at $30.00 per ton."

I do not think anyone looking at these issues of the Dagen Nyheter, which is produced as D.9, could be in any doubt that they are newspapers. The attention of the learned president was drawn to the fact that all these issues were in a series of consecutive dates and clearly one glance at it would show that these contain news of public interest, aside from advertisements. It was hardly necessary for the Customs officer to have referred the matter for any decision under section 22 of the Customs Act and in his own evidence he has stated clearly:—

"To my personal knowledge this publication is a daily newspaper, and the dates found in the bundle run consecutively."

The learned president misguided himself by trying to follow the Brussels Nomenclature. Consultation of this is hardly called for in my view. When he stated:—

"I rule that this particular paper is in complete conformity with the description of a magazine in Brussels Nomenclature."

He could not have checked 4901 carefully as I am unable to discover any of the items in A, B, C of 4901 of the Brussels Nomenclature into which the newspapers could be said to conform to. In his grounds of judgment, he said

he has not made up his mind, after having ordered confiscation of the goods, whether they are over-issued magazines or newspapers. He said:—

"I acquitted the defendants because there are not enough evidence to indicate either. I was in grave doubt as to whether these are over-issued newspapers or magazines and as such whether they are dutiable or not."

It is obvious therefore that the learned president had failed to come to a finding of fact one way or the other and was avoiding the issue but sought to compromise by acquitting the appellants, yet would not let them off completely by confiscating the goods.

There is no question here of any *delegatus non potest delegare* principle being applied as P.6 is a decision purported to have been made by the Comptroller-General of Customs. The defence called the person who signed P.6 and this witness said:—

"The Comptroller-General classified them as newspapers. The decision was not mine."

Therefore, no question of invoking section 3(3) and section 22 of the Act and contending that P.6 must be executed personally by the Comptroller-General arises.

In the circumstances I am acting under section 322 and by way of revision, I set aside the order of acquittal of the appellants on the two charges and I order that the appellants be retried on the two charges before another president. The order of confiscation is also to be set aside and will be dealt with at the new trial.

Orders of acquittal and confiscation set aside. Re-trial ordered.

Solicitors: *Eugene Khoo & Co.*

PUBLIC PROSECUTOR v. MUSA

[A.Cr.J. (Syed Othman J.) July 31, 1969]

[Kota Bharu — Criminal Appeal No. 12 of 1968]

Internal Security — Detention — Order made against person — Subsequent restriction order — Whether Minister was functus officio in making the detention order and was precluded from making the restriction order — Internal Security Act, 1960, s. 8(1) (a) & (b).

Constitutional Law — Administrative function — Detention or restriction orders — Not punishment for purposes of art. 7, Malaysia Constitution.

This was an appeal against the acquittal of the respondent on a charge of contravention of a restriction order. The respondent had been detained under section 8(1)(a) of the Internal Security Act since 1963. In 1968 he was served with a restriction order and it was for breach of this order that he was charged. It was argued on behalf of the respondent that once an order had been made under section 8(1)(a) of the Act, the Minister was *functus officio* and was therefore precluded from making an order under section 8(1)(b). This argument was accepted by the learned president of the sessions court.

Held, allowing the appeal: (1) the act of the Minister in issuing a detention or restriction order under section 8(1)(b) of the Act is in the exercise of his administrative function and the orders cannot be equated to orders of conviction for an offence or crime;

(2) the Minister was not precluded from making the restriction order in this case and as there was no evidence of bad faith, the restriction order was valid and should be enforced.

Cases referred to:—

(1) *In re Clew* (1881), 8 Q.B.D. 511.

(2) *Lim Hock Siew & Ors. v. The Minister of Interior & Defence* [1968] 2 M.L.J. 219.

MAGISTRATE'S CRIMINAL APPEAL

Abu Talib bin Osman (Deputy Public Prosecutor) for the appellant.

Raja Abdul Aziz bin Raja Addruse (*Mohamed Dzaiddin bin Haji Abdullah* with him) for the respondent.

Cur. Adv. Vult.

Syed Othman J.: The respondent was charged to the effect that he, being a person subject to the order of the Menteri Hal Ehwal Dalam Negeri,* Malaysia, under section 8(1)(b) of the Internal Security Act, 1960, contravened the said order by leaving the area of Pasir Puteh District without the prior permission in writing of the officer-in-charge, Police District, Pasir Puteh, thereby committing an offence punishable under section 44 of the Internal Security Act, 1960.

At the conclusion of the trial, the learned president acquitted the respondent. The Public Prosecutor has appealed against the acquittal.

The prosecution case was as follows: The respondent, a teacher, was under detention at Batu Gajah Detention Camp where on 9th January, 1968, he was served with an order made by the Menteri Hal Ehwal Dalam Negeri under section 8(1)(b) of the Internal Security Act, 1960. One of the conditions of the order was that he:—

"Shall reside and remain within the area of Pasir Puteh Police District and shall not leave or move out of Pasir Puteh Police District without the prior permission in writing of the officer-in-charge of Pasir Puteh Police District."

The order was accompanied by a bond.

The respondent refused to acknowledge the order and the bond. He said to the police inspector who was serving the documents on him that he was not accepting the conditions and that if the Government released him under those conditions he would rather stay in the

* Minister of Home Affairs.